

## **REMARKS**

Applicants have received and carefully reviewed the Final Office Action of the Examiner mailed February 3, 2009. Currently, claims 22, 24-28, and 30-36 remain pending. Claims 31-34 and 36 have been withdrawn subsequent an Examiner imposed restriction. Claims 22, 24-28, 30, and 35 have been rejected. Favorable consideration of the following remarks is respectfully requested.

### ***Claim Rejections under 35 U.S.C. § 103***

Claims 22, 24-28, and 35 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Ferguson et al. (U.S. Patent No. 5,637,086) in view of Foley (U.S. Patent No. 3,409,016). Applicants respectfully traverse the rejection.

Independent claim 22 recites in part, “a seal member releasably attached to the flanged end and covering the opening.” Independent claim 35 recites in part, “a seal releasably attached to the proximal end surface that seals the inflation lumen.” Ferguson et al. do not disclose a seal member attached to the flanged end and covering the opening. The Examiner relies on Foley to provide this element. In formulating the rejection, the Examiner asserts, “However, Foley discloses a balloon catheter with a seal/plug (fig.4, 38) disposed at the proximal most end of an inflation port (port through 36 where 38 is engaged) covering the opening though the port.” However, Foley does not disclose a seal that is releasably attached. In response to Applicants’ previous arguments, the Examiner asserts, “The seal of Foley is capable of being removed from the proximal port and is, therefore, interpreted to be releasably attached to the flanged end of port.” The Examiner is suggesting the plug of Foley must inherently be removable. M.P.E.P. §2112(IV) states, “The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic.” Nowhere does Foley teach or suggest the plug is releasably attached. Foley discloses at column 1, lines 58-62, “Upon withdrawal of the needle through the self-sealing plug, the plug seals itself and the catheter bag remains inflated until the distention tube adjacent the self-sealing plug is cut away to permit the fluid to escape from the bag.” Foley does not teach or suggest the plug is removable. Instead, Foley teaches the tube adjacent the plug is cut away to allow the fluid to escape. Foley teaches away from a removable plug. MPEP 2141.02 VI states, “A prior art

reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).” Therefore, Foley does not teach or suggest a seal that is releasably attached.

For at least the reasons set forth above, Ferguson et al. do not teach each and every element of independent claims 22 and 35. Foley does not teach what Ferguson et al. lack. Thus, even if one were to combine Ferguson et al. and Foley, one would not arrive at the device as claimed. Furthermore, there is no motivation, suggestion or other reason for one of ordinary skill in the art to modify Ferguson et al. or Foley to achieve the device as claimed. Reconsideration and withdrawal of the rejection are respectfully requested. Applicants submit that claims 24-28 are also in condition for allowance as they depend from claim 22 and add significant limitations to further distinguish them from the prior art.

Claim 30 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Ferguson et al. (U.S. Patent No. 5,637,086) in view of Foley (U.S. Patent No. 3,409,016) and in view of Walker (U.S. Patent No. 5,322,513). Applicants respectfully traverse the rejection.

For at least the reasons set forth above, Ferguson et al. do not teach each and every element of independent claim 22. Foley and Walker do not teach what Ferguson et al. lack. Thus, even if one were to combine Ferguson et al. and Foley and Walker, one would not arrive at the device as claimed. Furthermore, there is no motivation, suggestion or other reason for one of ordinary skill in the art to modify Ferguson et al., Foley, or Walker to achieve the device as claimed. Applicants submit that claim 30 is in condition for allowance as it depends from claim 22 and adds significant limitations to further distinguish it from the prior art. Reconsideration and withdrawal of the rejection are respectfully requested.

**Conclusion**

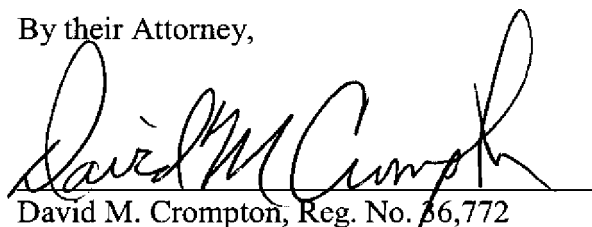
Reexamination and reconsideration are respectfully requested. It is respectfully submitted that all pending claims are now in condition for allowance. Issuance of a Notice of Allowance in due course is requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

Yiqun Wang et al.

By their Attorney,

Date: 4/27/09

A handwritten signature in black ink, appearing to read "David M. Crompton", is written over a horizontal line.

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